

### **REMARKS**

Claims 27, 28, and 30-34 are currently pending in this application.

In the last Office Action,<sup>1</sup> the Examiner rejected claims 27, 28, and 30 - 33 under 35 U.S.C. § 103(a) as being unpatentable over De La Moneda et al. (U.S. Patent No. 4,445,267, "De La Moneda") in view of Applicants' Admitted Prior Art (AAPA).

Applicants respectfully traverse the Examiner's rejection. A *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142, 8th Ed., Rev. 4 (October 2005), p. 2100-134.

A *prima facie* case of obviousness has not been established because, among other things, De La Moneda and AAPA, taken alone or in combination, fail to teach or suggest each and every element recited in claim 27.

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement of characterization in the Office Action.

De La Moneda fails to teach, at least, that the “side wall of the first gate electrode is **directly physically and without the presence of additional layers therebetween** connected to a side wall of the second gate electrode above the isolation element,” (emphasis added) as recited in claim 27. In the rejection, the Examiner admits that “De La Moneda does not specifically mention at least that “the sidewall of the first gate electrode is directly physically and with out the presence of additional layers there between.” Office Action at page 3. However, the Examiner contends that “AAPR in at least figures 1 to 3E and the description in page 6 lines 1-17 shows and describes both physical and electrical direct connection between element 16 and first and second gates including their sidewalls.” Office Action at page 4. Applicants disagree with the Examiner’s arguments and conclusions.

Contrary to the Examiner’s allegations, Figs. 1, 2A-2F, and 3A-E, and page 6 of the specification, **do not** show or describe that the side wall of the first gate electrode is physically connected to the side wall of the second gate electrode above the isolation element. Fig. 3E of the specification shows a first gate electrode 13 and a second gate electrode 15, formed on a first gate oxide film 12 and a second gate insulator film 14, respectively. However, the side wall of the first gate electrode 13 and the side wall of the second gate electrode 15 are **not** in physical contact with each other. That is, either the second gate insulator film 14 or the tungsten silicide ( $WSi_2$ ) film 16 is disposed between the first gate electrode 13 and the second gate electrode 15.

Moreover, the Examiner alleges that AAPA “shows and describes both physical and electrical direct connection between element 16 and first and second gates.” Office Action at page 4. Applicants advise, however, that the claim language in claim 27

recites that “the side wall of the first gate electrode is directly physically and without the presence of additional layers therebetween connected to a side wall of the second gate electrode above the isolation element.” (emphases added) Thus, the presence of the tungsten silicide film 16, which is physically present between the first and the second gate electrodes, would necessarily fail to show a direct physical contact between the first gate electrode 13 and the second gate electrode 15 in Fig. 3E of the specification.

Thus, AAPA fails to overcome the shortcomings of De La Moneda, and no *prima facie* case of obviousness has been established. Accordingly, claim 27 is allowable over the Examiner’s proposed combination of De La Moneda and AAPA, and claims 28 and 30-34 are also allowable due to their dependence from claim 27. The improper 35 U.S.C. § 103(a) rejection of claims 27, 28, and 30-34 should therefore be withdrawn.


In view of the foregoing, Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 27, 28, and 30-34 are in condition for allowance. Accordingly, Applicants request a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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